

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the
Invasive Species/Infested Waters
Citation Issued to Lee Stephen Vague
Citation No.: 172337

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION**

This matter came before Administrative Law Judge Amy J. Chantry for a Prehearing Conference on October 2, 2013, pursuant to a Notice of Prehearing Conference and Notice of Hearing that was issued on September 5, 2013.

Conservation Officer Jackie Glaser appeared on behalf of the Minnesota Department of Natural Resources (DNR). Appellant Lee Stephen Vague (Vague) appeared on his own behalf and without counsel.

During the Prehearing Conference on October 2, 2013, the parties agreed to conduct a formal hearing on the citation. Sworn testimony was taken at the hearing. The parties agreed that the Administrative Law Judge could make a recommendation based on the record created during the hearing. The record closed at the conclusion of the hearing.

STATEMENT OF THE ISSUE

- (1) Was Mr. Vague properly issued a civil citation under Minn. Stat. § 84D.10, subd. 4(b), for failing to have drain plugs removed or open when transporting water-related equipment?
- (2) Is \$100 the appropriate civil penalty for the violation of Minn. Stat. § 84D.13, subd. 5(a)(6)?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that Mr. Vague committed a violation of Minn. Stat. § 84D.10, subd. 4(b), and that a civil penalty of \$100 is an applicable penalty under Minn. Stat. § 84D.13, subd. 5(a)(6). Therefore, the Administrative Law Judge respectfully recommends that the Commissioner **AFFIRM** the citation and fine.

Based on the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On August 4, 2013, Conservation Officer Jackie Glaser was conducting a boat check at the St. Croix River Bluff Park in Hastings, Minnesota.¹ Conservation Officer Glaser was at the public landing to observe the boats being launched or removed from the waters of the St. Croix River.²

2. Conservation Officer Glaser was particularly interested in ensuring that boats being launched into or removed from the river followed all conservation requirements to ensure that aquatic invasive species were not transported by water-related equipment into or out of the lake.³ Certain aquatic invasive species, such as Zebra Mussels, are transportable in the bilge water of watercraft.⁴ Thus, to make sure invasive species are not transported from one body of water to another, Minnesota state law requires that bilge drain plugs on boats be open or removed when the boat is being transported. This allows all the water to drain from the boat before the boat is launched in other waters.⁵

3. At approximately 11:05 a.m. on August 4, 2013, Conservation Officer Glaser observed Mr. Vague drive his vehicle, which was pulling his boat, into the public access. Conservation Officer Glaser observed that the drain plug on the back of Mr. Vague's boat was not removed or open.⁶

4. Conservation Officer Glaser did not observe any water in the boat bilge.⁷

5. Mr. Vague did not dispute Conservation Officer Glaser's testimony. Mr. Vague agreed that the drain plug was not removed prior to transporting his boat on a public roadway.⁸

6. Mr. Vague questioned the effectiveness of the issuance of a \$100 civil penalty.⁹

7. Based upon her observations, Conservation Officer Glaser issued Mr. Vague a Civil Citation, No. 172337 for failing to open or remove a drain plug while transporting water-related equipment. The penalty imposed was a \$100 fine.¹⁰

¹ Testimony of Jackie Glaser.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* See also, Minn. Stat. § 84D.10, subd. 4(b).

⁶ *Id.*

⁷ Test. of J. Glaser; See Minn. Stat. § 84D.10, subd. 4(a).

⁸ Test. of Lee Vague.

⁹ *Id.*

¹⁰ Civil Citation No. 172337 on file and of record in this matter. See also, Minn. Stat. § 84D.13, subd. 5(a)(5).

8. Mr. Vague timely appealed the citation and requested that it be withdrawn.¹¹

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. This matter is properly before the Administrative Law Judge and the Commissioner of Natural Resources pursuant to Minn. Stat. §§ 14.50, 84D.13, subd. 8, and 116.072, subd. 6.

2. Minn. Stat. § 84D.10, subd. 4(b), requires that drain plugs, bailers, valves, or other devices used to control the draining of water from ballast tanks, bilges, and live wells must be removed or opened while transporting water-related equipment. "Water-related equipment" includes boats.¹²

3. DNR Conservation Officers are authorized to issue citations to persons who violate Minn. Stat. § 84D.10, subd. 4(b).¹³

4. Pursuant to Minn. Stat. § 84D.13, subd. 8, an appeal of a civil citation shall be brought under the procedures set forth in Minn. Stat. § 116.072, subd. 6, provided that a hearing is requested within 15 days after receipt of the citation.

5. Mr. Vague filed a timely appeal and request for hearing.

6. At a hearing on a violation of Minn. Stat. 84D, the burden is on the DNR to show by a preponderance of the evidence that Mr. Vague violated the statute cited.¹⁴

7. The DNR has established, by a preponderance of the evidence, that Mr. Vague violated Minn. Stat. § 84D.10, subd. 4(b), by transporting a boat without opening or removing its drain plug.

8. The statutorily-prescribed fine for a violation of Minn. Stat. § 84D.10, subd. 4(b), is \$100.¹⁵

9. The \$100 penalty is not unreasonable.

10. For purposes of Minn. Stat. § 116.072, subd. 6(d), Mr. Vague's request for a hearing was not solely for purposes of delay and was not frivolous.

¹¹ See Letter from Mr. Vague to the Commissioner of Natural Resources sent August 5, 2013, on file and of record in this matter.

¹² Minn. Stat. § 84D.02, subd. 18a.

¹³ Minn. Stat. § 84.13.

¹⁴ Minn. R. 1400.7300, subp. 5.

¹⁵ Minn. Stat. § 84D.13, subd. 5(a)(6).

11. The attached Memorandum provides further explanation of the reasons for these Conclusions and is incorporated herein.

Based on the Conclusions of Law, and for the reasons set forth in the Memorandum below, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that Invasive Species/Infested Waters Civil Citation No. 172337 issued to Lee Stephen Vague be **AFFIRMED**.

Dated: January 3, 2014

s/Amy J. Chantry
AMY J. CHANTRY
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order until at least five (5) days after receipt of the Report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner, and the Commissioner will consider the comments. The final order of the Commissioner may be appealed, pursuant to Minn. Stat. §§ 14.63 and 14.69.

MEMORANDUM

In an appeal of a DNR citation, the burden of proof is on the DNR to prove by a preponderance of the evidence that a violation of law occurred.¹⁶ A preponderance of the evidence means that it must be established by a greater weight of the evidence.¹⁷ "It must be of a greater or more convincing effect and ... lead you to believe that it is more likely that the claim...is true than...not true."¹⁸ The preponderance of the evidence standard is less than the clear and convincing standard, and less than the proof beyond a reasonable doubt standard used in criminal trials.¹⁹

Mr. Vague does not dispute that he transported his boat on a public roadway to the St. Croix River Bluff Park public access without removing the drain plug from his

¹⁶ Minn. R. 1400.7300, subp. 5.

¹⁷ 4 Minnesota Practice, CIV JIG 14.15.

¹⁸ *State v. Wahlberg*, 296 N.W.2d 408, 418 (Minn. 1980).

¹⁹ *State v. Shamp*, 422 N.W.2d 520, 525 (Minn. Ct. App. 1988), *citing Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978), *review denied* (Minn. June 10, 1988).

boat. In his defense, Mr. Vague asserted that he should not be held responsible for a violation of Minn. Stat. § 84D.10, subd. 4(b), because the \$100 fine is unnecessary to ensure that he complies with Minnesota laws involving the spread of invasive aquatic species in the future.

There is no exemption under Minn. Stat. § 84D.10, subd. 4(b), that would allow the Administrative Law Judge to waive the \$100 civil penalty. While it is true Mr. Vague now understands that he must remove his boat's drain plug whenever and wherever he is transporting his boat, such an understanding does not exempt him from a sanction for an undisputed violation of the law. The purpose of Minn. Stat. § 84D.10, subd. 4(b) is to prevent boats from being transported with their drain plugs in. An inserted drain plug prevents potentially infested lake water from draining out of a boat. If a boat is not properly drained potentially infested water can be transported from one lake to another; thereby, infesting a lake with an aquatic invasive species. A \$100 civil penalty is an appropriate sanction to prevent recidivism.

A preponderance of the evidence establishes that Mr. Vague transported his boat on a public roadway into the public access while its drain plug was inserted. Therefore, the DNR has met its burden of proving that Mr. Vague was in violation of Minn. Stat. § 84D.10, subd. 4(b). In addition, the \$100 fine is appropriate in relation to the harm that the DNR seeks to prevent under Minn. Stat. § 84D.13, subd. 5(a)(6). Accordingly, it is respectfully recommended that the citation and \$100 fine be **AFFIRMED**.

A. J. C.